Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers	)	GN Docket No. 94-33

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation ("GTE"), on behalf of its telephone and wireless communications companies, respectfully submits its comments regarding the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.[1] As discussed herein, GTE urges the Commission, in considering further Title II forebearance, to avoid selective or disparate treatment for CMRS providers. Forbearance, where appropriate, should extend to all providers within a particular service. Finally, GTE strongly urges the Commission to forbear from applying Section 226 of the Communications Act to all CMRS providers, regardless of size.

I. INTRODUCTION

The Notice states that the Commission has forborne from applying the "most burdensome" provisions of Title II to all CMRS providers, and asks whether, "within particular services classified as CMRS, there may be types of providers that merit further forbearance ...."[2] In determining whether further forbearance would serve the

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1 FCC 94-101 (released May 4, 1994).

2 Notice at ¶ 5.

public interest, the Commission proposes to examine the costs and benefits of compliance with specific provisions of Title II.[3]

GTE commends the Commission for forbearing from tariff and certification regulation of all CMRS providers in the Second Report and Order in Docket No. 93-252.[4] As noted in that decision, such forbearance will promote competition and directly benefit consumers.[5] GTE also concurs that programs to facilitate the participation of small businesses in the communications marketplace may serve the public interest, and that in some cases, relaxation of regulatory requirements for such entities may be warranted.

At the same time, however, Congress has sent a clear message that the public interest would best be served in the CMRS context by eliminating regulatory disparities. Accordingly, any proposal to create new distinctions among CMRS providers should be critically scrutinized to assure it does not violate Congressional intent.

Against this background, GTE respectfully submits that selective and disparate forbearance from Sections 210, 213, 215, 218, and 220 is unnecessary because these provisions either grant flexibility (in the case of Section 210) or are merely reservations of authority which impose no material compliance costs. In addition, Sections 223 (obscene phone calls), 225 (Telecommunications Relay Service), 227 (telemarketing), and 228 (pay-per-call) either do not impose significant costs or create expenses only for entities that voluntarily enter certain non-common carrier businesses. In these circumstances, discrimination among categories of carriers would yield no benefits, but

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3 Id. Based on the assumption that compliance costs may be fixed (and therefore create disproportionate burdens for smaller providers), the Commission holds out the prospect of further forbearance for some CMRS carriers. Id. at ¶ 6.

4 Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411 (1994).

5 Id. at 1478-1481 (¶¶ 173-182).

could violate principles of regulatory parity, harm consumers, and create arbitrary and unenforceable classifications.

In contrast, further forbearance from Section 226 (TOCSIA) plainly is warranted for all CMRS providers, regardless of size. Enforcement of this section is unnecessary to protect consumers, but compliance with its requirements would impose potentially massive burdens on all CMRS providers, whether or not they offer mobile public phone services. Consequently, forbearance is not only justified under the statutory test set out in Section 332, but essentially compelled by the cost/benefit analysis proposed in the Notice.

II. SELECTIVE AND DISPARATE FORBEARANCE FROM TITLE II DOES NOT APPEAR WARRANTED.

GTE applauds the Commission for recognizing that regulation should be minimized in the competitive CMRS marketplace.[6] Regulation can increase rates for consumers, impede flexibility, and hinder responsiveness. Consequently, it should be imposed only where the benefits of remedying an identifiable market failure outweigh the compliance costs.

Concern over the potentially detrimental effects of regulation may be particularly warranted where it imposes unique or substantial costs on small entities. Congress, of course, has sought to promote participation of small businesses and other designated entities in the CMRS marketplace. At the same time, however, Congress has made clear its intent that all providers of these services be subject to symmetrical regulation. Accordingly, any proposal to introduce additional distinctions between classes of CMRS providers should bear a heavy burden of justification. Examining the relevant Title II

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6 Second Report and Order, 9 FCC Rcd at 1478 (¶173).

provisions on a section-by-section basis indicates no pressing need for such selective and disparate forbearance:

Section 210 allows carriers to issue franks and passes to their employees and to provide free service to the Government in certain circumstances. GTE supports the Commission's tentative conclusion that this section increases flexibility, and therefore no purpose would be served by forbearance.[7]

Sections 213 (valuation of property), 215 (examination of transactions), 218 (inquiry into management), 219 (annual reports), and 220 (form of accounts and records) impose no affirmative obligations on CMRS providers. Rather, they reserve authority for the Commission to take certain actions where there is a need to do so. Accordingly, their presence imposes no unique burdens on particular classes of carriers, and the Commission should either forbear for all carriers or for none.

Sections 223 (obscene or harassing communications), 227 (unsolicited phone calls and fax transmissions), and 228 (pay-per-call services) do impose potentially significant requirements on carriers. For example, under Section 223, carriers that bill for adult information providers must restrict access to minors and allow "reverse blocking." Section 227 imposes various requirements on carriers that engage in telemarketing activities. And, Section 228 requires local exchange carriers to block access to 900 services where technically feasible, and imposes other obligations on long distance carriers that bill and collect for 900 calls.[8]

While compliance with these provisions may impose certain burdens, in each case the statutory requirements advance important consumer protection goals. In addition, the most onerous requirements apply only to entities that voluntarily enter

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7 Notice at ¶ 10.

8 See generally id. at ¶¶ 12-19, 24-31.

certain non-common carrier lines of business. In light of these considerations, selective forbearance does not appear warranted.

Section 225 (Telecommunications Relay Service) imposes costs that vary with the size of the carrier. Small entities (those with less than $333,333 in annual interstate revenues) would pay only $100 per year under this provision. Consequently, selective forbearance seems unnecessary.[9]

In contrast to the provisions discussed above, Section 226 (TOCSIA) of the Act imposes substantial and unnecessary burdens on all CMRS providers. Accordingly, as explained below, the Commission should forbear from applying TOCSIA regulations to all CMRS providers, regardless of size.

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9 See Notice at ¶ 20. With respect to all of these provisions, the difficulty of defining an appropriate class of small entities further counsels against disparate treatment. For example, when compliance costs are not fixed, there is no basis for drawing a rational line based on income and net worth. Cf. Notice at ¶ 34. Moreover, average revenue per subscriber, percent interconnected traffic, average number of subscribers, and average rates bear no relation to a carrier's cost structure or profitability, as acknowledged by the Commission. See id. at ¶ 34 & notes 84 and 85. Analysis of the sophistication of the customer base (id. at ¶ 37) is relevant to determining whether enforcement of a particular statutory provision is needed to protect consumers. Sophistication is not, however, correlated with the size of the service provider. For example, consumers of mobile public phone services generally are sophisticated business users, yet these services may be provided by any size entity. Finally, a case-by-case determination (id. at ¶ 38) likely would result in a deluge of parties pleading their individual cases for forbearance.

Of course, even if a rational line could be drawn, monitoring compliance would be extremely difficult. Each of the options proposed by the Commission — certification (which is accurate only when filed), random audits (which require devotion of scarce resources), affirmative reporting requirements (which would create additional regulation), and complaints (which are unlikely to be filed) — is seriously flawed. See id.at ¶ 39.

III. THE COMMISSION SHOULD FORBEAR FROM APPLYING TOCSIA REQUIREMENTS TO ALL CMRS PROVIDERS.

The Notice states that the Second Report and Order found the record insufficient to justify a finding that forbearance from extending TOCSIA requirements to all CMRS providers would serve the public interest.[10] As GTE explained in its Petition for Reconsideration of that Order, the Commission's finding in this regard was plainly erroneous. Enforcement of TOCSIA in the CMRS context is not necessary to protect consumers, and the TOCSIA rules impose substantial burdens on all CMRS providers, whether or not they provide mobile public phone services.[11] Accordingly, as once again discussed below, forbearance from enforcing TOCSIA is justified under the Section 332 test and essentially compelled by any rational cost/benefit analysis.

First, enforcement of TOCSIA is not necessary to assure just and reasonable rates or to protect consumers. There is no evidence in the record of consumer complaints regarding mobile public phone services. Indeed, mobile public phone service providers must offer reasonable rates in order to convince third parties, such as rental car companies and airlines, to use their service platforms. In addition, mobile public phone service providers have strong incentives to educate customers regarding their rates and service offerings and to unblock access in order to maximize usage and avoid discontent. Unlike landline OSPs in the hotel phone and pay phone contexts, mobile public phone service providers actively seek to stimulate return business from end users. As noted above, users of mobile public phone services tend to be sophisticated business users.[12]

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10 Id. at ¶ 23.

11 Petition for Reconsideration of GTE, GN Docket No. 93-252, filed May 19, 1994 ("Regulatory Parity Petition for Reconsideration"), at 2-6.

12 See note 9, supra. For additional discussion of these points, see Regulatory Parity Petition for Reconsideration at 3 and TOCSIA Petition for Reconsideration at 19-21. GTE also has explained that enforcement of TOCSIA actually would

Second, forbearance is compelled by the cost/benefit analysis underlying the public interest prong of Section 332. As GTE detailed in the its TOCSIA Petition for Reconsideration, compliance with TOCSIA's branding requirement would impose costs of over twenty million dollars on the cellular industry alone. For CMRS providers generally, such compliance likely would engender costs an order of magnitude higher, given the multitude of providers.[13]

Another layer of costs would be incurred by the hundreds of cellular carriers, thousands of PCS providers, and unknown numbers of other CMRS carriers that would have to prepare, file, and maintain tariffs — and by the Commission in handling those tariffs. Indeed, as GTE fully explained in its Regulatory Parity Petition for Reconsideration, enforcing compliance with TOCSIA undermines the benefits of tariff forbearance and diminishes competition.[14]

Furthermore, compliance would be impossible in many situations. Underlying CMRS providers cannot enforce compliance with aggregator requirements by mobile public phone providers because they have no contractual or tariff relationship with those entities.[15] Nor can underlying CMRS carriers provide information about their rates, because the charges to the customer (unlike in the landline OSP context) are determined by the mobile public phone provider. For terrestrial services, the mobile public phone provider cannot realistically satisfy the aggregator requirement of allowing the caller to transfer to another underlying CMRS provider, especially if a customer is

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engender customer confusion, particularly for roamers. Regulatory Parity Petition for Reconsideration at 4 n.9.

13 Once again, the Commission should understand that all CMRS providers would have to incur the expense of branding calls, regardless of whether they offer mobile public phone services. See TOCSIA Petition for Reconsideration at 13-14; Regulatory Parity Petition for Reconsideration at 4 n.8.

14 Regulatory Parity Petition for Reconsideration at 5.

15 TOCSIA Petition for Reconsideration at 15-16; Regulatory Parity Petition for Reconsideration at 5.

roaming. Similarly, one air-to-ground provider cannot transfer calls to another air-to-ground provider because of the shared use of frequencies by such licensees, and the incompatibility of different carriers' equipment.[16]

In short, compliance with TOCSIA engenders massive costs but produces no discernible public benefits. Accordingly, forbearance should expeditiously be extended to all CMRS providers, regardless of size.

IV. CONCLUSION

There is no basis for selective and disparate forbearance from Sections 210, 213, 215, 218, 220, 223, 225, 227, and 228 of the Communications Act. Forbearance from Section 226 clearly is warranted, however, for all CMRS providers.

Respectfully submitted,

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16 See generally TOCSIA Petition for Reconsideration at 15-16, Regulatory Parity